

***Sleater, et al. v. Benton County***

**USDC, E.D. Wash., Case No 4:17-cv-05033-SAB**

This Settlement Agreement (“Settlement” or “Agreement”) is made by and among Defendant Benton County (“County”) and Plaintiff Jaclyn Rae Sleater (“Plaintiff”) on behalf of Plaintiff and the certified classes identified below. The County and Plaintiff are each a “Party” and collectively the “Parties” to this Agreement. The Parties agree as follows.

**1. DEFINITIONS.**

In addition to the terms defined parenthetically elsewhere in this Agreement, the following definitions apply to this Agreement.

- 1.1** “Claim Form” means the form, attached as Exhibit A, that Settlement Class Members must return pursuant to the terms of this Agreement to receive a full payment from the Settlement Fund.
- 1.2** “Claims Administration” means the process under the Court’s supervision that includes, but is not limited to, the manner in which the Class Notices (including the Claim Forms) are distributed and payments are made pursuant to this Agreement.
- 1.3** “Class Counsel” means Andrew Biviano of the Law Office of Andrew S. Biviano, Breean Lawrence Beggs of Paukert & Troppmann PLLC, and Toby Marshall and Eric Nusser of Terrell Marshall Law Group PLLC.
- 1.4** “Class Fund” means the total sum to be paid to Plaintiff and Settlement Class Members pursuant to the terms of this agreement, which will be up to but no more than Seven Hundred Seventy-Nine Thousand Six Hundred Dollars and Zero Cents (\$779,600).
- 1.5** “Class Notice” means the notice provided to the Settlement Class Members notifying them of the Court’s preliminary approval of the Parties’ settlement. The Class Notice will include a Claim Form, provide opt-out instructions, and indicate a settlement hearing date set by the Court to consider objections, if any, to the settlement and to enter the Order Granting Final Approval. The Class Notice will be in substantially the form as Exhibit B to this Agreement.
- 1.6** “Class Representative” means named Plaintiff Jaclyn Rae Sleater.
- 1.7** “Court” means the United States District Court for the Eastern District of Washington.
- 1.8** “Effective Date” means the date this Settlement Agreement becomes effective, which will be the later of either 31 days following the Court’s entry of an order granting final approval of the settlement or, if a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial approval of the settlement.

- 1.9** “Final Approval Order and Judgment” means an order and judgment, substantially in the form of Exhibit D to this Agreement, entered by the Court approving this Agreement as final and binding on the Parties and Settlement Class Members.
- 1.10** “Notice Date” means the date that Class Notice is disseminated to all members of the Settlement Classes, which shall be no later than 90 days following Preliminary Approval.
- 1.11** “Preliminary Approval” means the Court has entered an order, substantially in the form of Exhibit C to this Agreement, preliminarily approving the terms and conditions of this Agreement, including the manner of providing Class Notice to the Settlement Classes.
- 1.12** “Residual Fund” means the total sum of the funds that would have been paid to Settlement Class Members (one-third of either \$200 or \$1,000, as set forth in Paragraph 5.5 and subject to the offset provisions of Paragraph 5.6) who would otherwise be entitled to receive a direct payment by check but who do not timely return a Claim Form.
- 1.13** “Service Award” means the payment to Class Representative Jaclyn Rae Sleater for her time and effort in connection with this action in an amount approved by the Court. That award shall not exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000).
- 1.14** “Settlement Class Member” means a person identified as being a member of the Issuance Class or Arrest Class based on records of the Benton County Superior Court, and as more fully set forth in paragraphs 5.3 and 5.4, below.
- 1.15** “Settlement Classes” means the Issuance Class and Arrest Class defined in section 3 below.

## **2. RECITALS.**

**2.1** A legal financial obligation (“LFO”) is a fine, penalty, court cost, or other expense that may be imposed as part of a sentencing order and judgment in a criminal proceeding. The imposition and collection of LFOs has been the subject of frequent litigation. *See, e.g., State v. Blazina*, 182 Wn.2d 827 (2015). Due process precludes the jailing of a person for failure to pay LFOs if the person’s failure to pay was due to indigence. *Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 111 (2002) (citing *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983)). But if a person is capable of paying and willfully refuses to pay or if a person does not “make sufficient bona fide efforts to seek employment or borrow money in order to pay,” a government may imprison the person for failing to pay LFOs. *Bearden*, 461 U.S. at 668.

**2.2** In 2011, the Washington Legislature stated in part:

(1) The legislature finds that it is in the interest of the public to promote the reintegration into society of individuals convicted of crimes. Research indicates that

legal financial obligations may constitute a significant barrier to successful reintegration . . . .

(2) At the same time, the legislature believes that payment of legal financial obligations is an important part of taking personal responsibility for one's actions. The legislature therefore, supports the efforts of county clerks in taking collection action against those who do not make a good faith effort to pay.

Section 1, Chapter 106, Laws of 2011.

**2.3** On March 15, 2017, Plaintiffs filed a proposed class action lawsuit against the County in the United States District Court for the Eastern District of Washington under the name *Sleater v. Benton County*, Case No. 4:17-cv-05033 ("Lawsuit"). On behalf of herself and the Classes defined below, Plaintiff alleged due process claims under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution for which she sought compensatory damages, nominal damages, prejudgment and post-judgment interest, and attorneys' fees and costs (the "Claims"). The Claims arose out of the County's alleged policies, practices, and customs regarding enforcement of LFOs, including issuing arrest warrants for non-payment of LFOs without first issuing a summons or other court directive to appear at a hearing and the incarceration of persons for non-payment of LFOs without first determining the willfulness of the non-payment at a hearing.

**2.4** The Parties seek to avoid the expense of further litigation and to settle the Lawsuit for the consideration set forth herein, the sufficiency of which is hereby acknowledged. Without admitting fault or liability, the Parties agree to settle the Claims in the Lawsuit. Nothing in this Settlement supersedes the authority of the Benton County Superior Court under court rule, Chapter 10.01 RCW, or other law to enforce LFOs against a person who is not indigent and is capable of paying but willfully refuses to pay LFOs.

**3. THE CLASSES.** On November 30, 2018, the Court issued an Order certifying a Class and Subclass (collectively, the "Settlement Classes") defined as follows:

**Issuance Class:** All persons to whom Benton County issued arrest warrants for failure to pay legal financial obligations without first issuing a summons or other court directive to appear at a hearing, from three years prior to the filing of this action through September 20, 2022.

**Arrest Class:** All persons arrested and incarcerated from three years prior to the filing of this action through September 20, 2022 pursuant to arrest warrants issued by Benton County for failure to pay legal financial obligations that were issued without first issuing a summons or other court directive to appear at a hearing.

**3.1** On August 20, 2021, the County filed a Motion to Decertify Class. On October 21, 2021, the Court heard oral argument on Defendant's motion. The Court had not yet ruled on the Motion to Decertify Class by the time the parties agreed to settle the Claims.

#### **4. CONDITIONAL AGREEMENT.**

**4.1** This Settlement is subject to (1) entry of an order by the Court preliminarily approving the Settlement; (2) entry of an order by the Court finally approving the Settlement; and (3) passage of the Effective Date. On the Effective Date, the Claims of Plaintiff and the Settlement Class Members shall be settled and dismissed with prejudice. Any other individual claims of Plaintiff Jaclyn Sleater that could have brought in the Lawsuit shall also be settled and dismissed with prejudice on the Effective Date.

**4.2** The Parties have asked the Court to stay all proceedings in the Lawsuit except those contemplated or required by this Agreement, such as proceedings related to preliminary and final approval of the Settlement and, if necessary, determination of reasonable attorneys' fees and costs. In the event the Court does not approve the Settlement, the interim stay shall automatically be lifted, and this Agreement shall be null and void and of no force and effect whatsoever.

**4.3** The Parties agree to use their best efforts to prevent, stay, or seek dismissal of, or oppose entry of, any interim or final relief of any member of the Settlement Classes in any other litigation that challenges the settlement proposed herein.

#### **5. PAYMENTS, ATTORNEYS' FEES, AND COSTS.**

**5.1** In full and final payment and settlement of all claims of the named Plaintiff and the Settlement Class Members related to or arising out of the subject matter of the Lawsuit, the County agrees to make the payments set forth in this section.

**5.2** The County shall pay the Class Fund, which (as previously defined) is an amount up to but not more than \$779,600.

**5.3** The Parties have made reasonably diligent efforts to identify the members of the Settlement Classes based on Benton County Superior Court records. The parties have identified a combined total of 1,642 possible Settlement Class Members. Reasonably available records show that 1,078 of these people are members of the Issuance Class only because available records do not show these individuals were incarcerated solely as a result of the allegedly illegal warrants. In most cases, it appears there were bases for the incarceration other than the allegedly illegal warrants. Each of these 1,078 members of the Issuance Class will receive up to \$200 in damages pursuant to this settlement.

**5.4** The Parties have identified 564 possible members of the Arrest Class. Reasonably available records show that these individuals were issued allegedly illegal arrest warrants and

that they were more likely than members of the Issuance Class to have been incarcerated because of the allegedly illegal warrants. Each of these 564 members of the Arrest Class will receive up to \$1,000 in damages pursuant to this settlement.

**5.5** The Parties agree that each Settlement Class Member will be issued a Claim Form (along with Class Notice) that the member must return to receive the appropriate monetary award set forth above. The process for locating members for disseminating Class Notice and Claims Forms will be based on last known addresses in records of the Benton County Clerk and use of national change of address resources. Electronic means of notice, including email and website-based information, will also be used. In the event of returned or otherwise undeliverable mail, the Parties agree the Claims Administrator will use recognized cost-effective databases (e.g., LexisNexis) to improve the possibility of notice. The Claim Forms will ask members of the Settlement Classes to provide their name, date of birth, and current address for issuance of payment. If the Settlement Class Member returns the form in the time allotted (60 days), subject to any offsets under paragraph 5.6 below, they will receive the full amount of the award set forth above (\$200 for members of the Issuance Class; \$1,000 for members of the Arrest Class). If they fail to return the Claim Form, one third of the award set forth above (\$67 for members of the Issuance Class; \$333 for members of the Arrest Class) will be paid into the Residual Fund after first offsetting any amount of outstanding LFO debt as provided below.

**5.6** All awards made to Settlement Class Members—regardless of whether they return a Claim Form—will first be used to pay down outstanding LFO debts in a Benton County Superior Court case, with any remaining funds issued directly to Settlement Class Members as set forth in this section. Thus, if a Settlement Class Member has outstanding LFO debts exceeding the amount of the award, the award will be paid in its entirety to the Benton County Clerk and will be credited to that Settlement Class Member's account and reduce their debt accordingly. If the Settlement Class Member has no outstanding LFO debt or owes less than their settlement award, they will have the full amount of the award, or the remaining amount after the LFO debt is paid in full, paid to them directly by check unless they failed to timely return a Claim Form, in which case the funds will be handled in accordance with Section 5.7.

**5.7** If a member of the Settlement Classes is entitled to receive a direct payment by check but does not timely return a Claim Form, the funds that would have been paid to that member (one-third of either \$200 or \$1,000, as set forth in Paragraph 5.5 and subject to the offset provisions of Paragraph 5.6) will go into the Residual Fund. After the total amount of this Residual Fund is determined, it will be paid to all members of the Settlement Classes who timely returned a Claim Form on an equal per capita basis. For example, if a total of 100 individuals return a Claim Form, each will receive 1% of the Residual Fund, in addition to their monetary award of \$200 or \$1,000. There will be no reversion of any Residual Funds to Benton County.

**5.8** Plaintiff will request a reasonable Service Award of up to \$25,000 for her service as Class Representative. The Class Representative Service Award will be paid from the Class Fund but will not diminish awards to Settlement Class Members unless the total sum of those

awards and the Service Award exceeds \$779,600, in which case Class member awards will be reduced proportionally to bring the total payment to \$779,600.

**5.9** Benton County shall also bear the costs of Claims Administration, either through its own efforts or by hiring an outside claims administrator. These costs will not be paid out of settlement funds.

**5.10** Benton County shall also pay \$300,000 to Class Counsel to compensate them for attorneys' fees and litigation costs, subject to Court approval. This will be paid separately from and in addition to the Class Fund.

**5.11** Within 30 days after the Effective Date, Benton County will pay to Class Counsel the class representative Service Award and the award for attorneys' fees and costs. Any payments owed to Settlement Class Members who timely (i.e., within 60 days, as set forth in paragraph 5.5) return a Claim Form shall be issued within 180 days of the Effective Date. All such payments shall be subject to the offset provisions of paragraph 5.6, and no such payments shall be issued to Settlement Class Members until the Effective Date has transpired.

**5.12** If any checks sent to Settlement Class Members in accordance with the payment provisions of paragraph 5.11 remain uncashed 181 days after issuance, the funds associated with those checks shall be deemed abandoned and shall be promptly paid to the Legal Foundation of Washington.

## **6. RELEASE.**

Upon the Court's entry of an order granting final approval of the settlement or, if a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial approval of the Settlement, Plaintiff, on behalf of herself and on behalf of all Settlement Class Members other than those who have validly and timely excluded themselves, shall be deemed to have absolutely and unconditionally released all claims that were brought or could have been brought against Benton County based on the facts asserted in the Class Action Complaint. This release includes the complete discharge, dismissal with prejudice on the merits, and settlement and release of any and all manner of claims, attorneys' fees, and causes of action of any kind, nature or description whatsoever, whether known or unknown, that Plaintiff or any or all other Members of the Settlement Classes ever had, now have, or may have against Benton County and any and all of its associated or affiliated persons, which arise out of or are based on the actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events, claims, or the subject matter of the actions at issue in the Lawsuit. The released claims include any claims or causes of action that involve, directly or indirectly, any of the actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events, claims, or any other matters, things, or causes whatsoever, or any series thereof, that were, could have been, or in the future can or might be alleged, asserted, set

forth, claimed, embraced, involved, or referred to in, or related to, directly or indirectly, the actions or the subject matter of the actions at issue in the Lawsuit.

## **7. ADDITIONAL TERMS.**

**7.1 State Law.** This Agreement shall be deemed to have been made in and shall be construed under the Laws of the State of Washington.

**7.2 Headings.** Any headings to articles, sections or paragraphs appearing herein are not part of the terms of this Agreement and shall not be interpreted as such.

**7.3 Construction.** None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of construction that would or might cause any provision to be construed against the drafter.

**7.4 Severability.** The provisions of this Agreement are not severable.

**7.5 Representations and Warranties.** The Parties, and each of them, represent and warrant that they have carefully read the contents of this Agreement, and this Agreement is signed freely by each individual executing this Agreement on behalf of each of the Parties. The Parties, and each of them, further represent and warrant to each other that they have made such investigation of the facts pertaining to this Settlement, this Agreement, and all of the matters pertaining thereto that they deem necessary. Each individual executing this Agreement on behalf of any Party does hereby represent and warrant that they have the authority to execute this Agreement on behalf of, and fully bind, each principal which such individual represents or purports to represent.

**7.6 Termination.** This Settlement and Agreement may automatically terminate or be terminated by a Party, and thereupon become null and void, if the Court declines to enter an order of final approval of the Settlement that either Party determines does not fulfill, comport with, and/or satisfy the terms and conditions of this Agreement in any material respect. If any Party makes such a determination, it may, within 10 days after the Court's entry of final approval of the Settlement, give the other Party written notice thereof. If, within 14 days of the giving of such written notice, the Parties have not agreed in writing to proceed with all or part of the Settlement and Agreement pursuant to the terms of any such final approval order of the Court, then the Settlement and Agreement will be null and void. If any final approval order of the Court is reversed or modified in any material respect on appeal, and if within 31 days after the date when such reversal or modification becomes final, the Parties have not agreed in writing to proceed with all or part of the Settlement and Agreement in light of such ruling, then this Settlement and Agreement will be null and void.

If this Settlement and Agreement is terminated for any reason, the Lawsuit shall for all purposes revert to its status as of the day immediately prior to the Agreement execution date,

and none of the releases and none of the terms of this Agreement shall be effective or enforceable except the immediately preceding provisions.

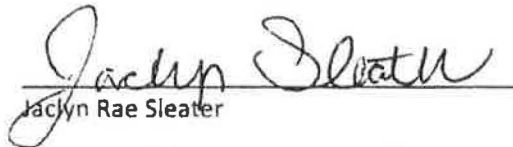
**7.7 Further Assurances.** Each of the Parties agrees that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Agreement.

**7.8 Agreement Execution Date.** The date on which the last signature is affixed below shall be the Agreement execution date.

**7.9 Complete Agreement.** This Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the Parties, and this Agreement cancels and supersedes all prior written and unwritten agreements and understandings pertaining to the Settlement of the Action.

THE PARTIES HEREBY AGREE TO THE ABOVE SETTLEMENT AGREEMENT BY THE FOLLOWING SIGNATURES.

**For Plaintiff and Classes:**

  
Jaclyn Rae Sleater

Date: 10-8-2022

Approved as to form:


PAUKERT & TROPFMANN PLLC

By:   
Breean Lawrence Beggs

LAW OFFICE OF ANDREW S. BIVIANO

By:   
Andrew Biviano

TERRELL MARSHALL LAW GROUP PLLC

By:   
Toby J. Marshall  
Eric R. Nusser

*Attorneys for Plaintiff and Classes*



For Defendant Benton County:

  
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Benton County Commissioner

  
\_\_\_\_\_  
Benton County Commissioner

  
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Benton County Commissioner

Date: 11-8-2022

MENKE JACKSON BEYER, LLP

By:   
\_\_\_\_\_  
Kenneth W. Harper 11/8/22

Attorneys for Defendant